

FILED 10 MAR 12 11:26 USDC-OR

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DENNIS HUNG NGUYEN,
Petitioner,

Civ. No. 07-1825-CL

v.

NANCY HOWTON,
Respondent.

ORDER

PANNER, District Judge:

Magistrate Judge Mark D. Clarke filed a Report and Recommendation, and the matter is now before this court. See 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b). Although no objections have been filed, this court reviews the legal principles *de novo*. See Lorin Corp. v Goto & Co., Ltd., 700 F.2d 1202, 1206 (9th Cir. 1983).

I have given this matter *de novo* review. I agree with Judge Clarke that the first ground for relief raised by petitioner, which is based on Blakely v. Washington, 542 U.S. 296 (2004),

fails because Blakely does not apply retroactively to petitioner's sentencing, which occurred in 1999. See Schardt v. Payne, 414 F.3d 1025, 1036-37 (9th Cir. 2005). Judge Clarke is correct that petitioner waived his second ground for relief, ineffective assistance of counsel, by failing to argue the issue in his briefing. See Renderos v. Ryan, 469 F.3d 788, 800 (9th Cir. 2006). Petitioner's ineffective assistance of counsel claim also fails on the merits. Petitioner's trial counsel cannot be faulted for failing to anticipate the holding in Blakely.

I find no error. Accordingly, I ADOPT the Report and Recommendation of Magistrate Judge Clarke.

CONCLUSION

Magistrate Judge Clarke's Report and Recommendation (#36) is adopted. The Petition for Writ of Habeas Corpus (#2) is dismissed.

IT IS SO ORDERED.

DATED this 11 day of March, 2010.

A handwritten signature in black ink, reading "Owen M. Panner", is written over a horizontal line.

OWEN M. PANNER
U.S. DISTRICT JUDGE